IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1769 of 1987

with

CIVIL APPLICATION No.11138 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JPATEL RAMABHAI JOITARAM & 1 - Petitioner(s)
Versus
JASHVANTBHAI NARAYANBHAI VYAS & 4 - Respondent(s)

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Appearance :

MR VC DESAI for Petitioner(s) : 1 - 2.
MR AJ PATEL for Respondent(s) : 1, 1.2.1,1.2.2 - 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4,2.2.5 - 4, 4.2.2, 4.2.3, 4.2.4,4.2.5 - for Respondent(s) : 4,

MR MENGDEY, AGP for State Authorities
UNSERVED-EXPIRED (R) for Respondent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/06/2006

COMMON ORAL JUDGMENT

1. The short facts of the case are that the petitioners are claiming tenancy right over the land in question for pursuing their application under Section 32PP of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the Act”). It appears that initially there were proceedings under Section 32G of the Act and vide order dated 13.7.1961 the Agricultural Lands Tribunal and Mamlatdar, Vijapur declared that the sale was ineffective and the land was placed for disposal under Section 32P of the Act. The appeal was preferred to the Deputy Collector, Mehsana being Tenancy Appeal No.290/1963 by the petitioner and on 6.11.1965 the appeal was allowed and the matter was remanded. It appears that against the said decision of the Deputy Collector, the revision was preferred by the landlord before the Gujarat Revenue Tribunal being Revision No.TENBA-172/66 and the said revision was allowed in favour of the landlord vide order dated 27.6.1966. It appears that the tenant carried the matter before this Court by preferring Special Civil Application in the year 1966, which ultimately came to be rejected. Consequently, the sale remained as ineffective and the land was placed for disposal under Section 32P of the Act.

2. It appears that so far as the proceedings under Section 32P of the Act are concerned, they were registered vide No.13/1963 and as per the order dated 31.1.1964 of the Mamlatdar, Vijapur, the land in question was ordered to be given to the landlord. The petitioner-tenants did prefer revision before the Tribunal being No.TENBA-1358/64, which was dismissed for default on 27.6.1966. It appears that the application for restoration was also made subsequently by the petitioner – tenants before the Tribunal being Application No.10/66 and the said application came to be dismissed on 1.12.1966 and consequently there were no further orders for the proceedings under Section 32P of the Act. It is not in dispute that thereafter on 27.6.1968 the possession is handed by the petitioner-tenants to the landlord and the said factum of handing over of the possession is admitted.

3. It appears that the petitioner-tenants also made the application under Section 32PP of the Act and the said application was registered as Tenancy Case No.91 of 1966. In the said proceedings, initially as per the order dated

29.2.1968, ALT-Mamlatdar, Vijapur rejected the said application. The petitioners carried the matter in appeal before the Deputy Collector, Mehsana in the proceedings of Tenancy Appeal No.148/1968, which also came to be dismissed on 30th September, 1969. The petitioners further carried the matter before the Tribunal being Revision No.TENBA-220/1970 and vide order dated 17.2.1971, the revision was allowed and the matter was remanded to the Mamlatdar and ALT.

4. In view of the order passed by the Tribunal, Mamlatdar and ALT under-took the remand proceedings vide Remand Case No.584 of 1979 and on 31.12.1979 he dismissed the application. The matter was carried before the Deputy Collector in appeal once again being Appeal No.64 of 1983 and the said appeal came to be dismissed on 4.7.1983.

5. It appears that the petitioners further carried the matter before the Revenue Tribunal in revision being Revision Application No.TENBA-76/1984 and the said revision is also dismissed vide order dated 4.6.1986 and it is under these circumstances, for challenging the orders passed by the Revenue Tribunal and the Authority below,

the petitioners have approached this Court by preferring the present petition.

6. Heard Mr.Desai, learned Counsel appearing for the petitioners, Mr.Mengdey, learned AGP appearing for the State Authority and Mr.Shital Patel, learned Counsel appearing for the applicants of Civil Application No.11138 of 2005.

7. Mr.Desai, learned Counsel appearing for the petitioners, contended that the application was made by the petitioners within the stipulated period from 29.12.1965 to 28.12.1966 and during that period the possession was not handed over. He further submitted that the possession was handed over on 27.6.1968 and, therefore, as the possession was handed over on a later date and, in any case, was not handed over during the period from 29.12.1965 to 28.12.1966, the land was available for disposal under Section 32PP since as per the statute the option was available to the tenants to purchase the land. He submitted that as per the explanation of Sub-section (5) of Section 32PP of the Act, if the possession was not handed over during the said period, which enable the tenants to make

application under Section 32PP of the Act, the land can be said as available for disposal and the rejection of the application by all the Authorities on the ground that the possession was handed over in the year 1968 is illegal. He further submitted that even if it is considered that the possession was already handed over, then also the possession was admittedly not handed over during the specified period from 29.12.1965 to 28.12.1966 and, therefore, the application of the petitioners was required to be entertained by the authority and in his submission, though the explanation to Sub-section (5) of Section32PP is inserted in the statute book in the year 1973 by amendment, the same is having retrospective effect and, therefore, the said explanation would apply to the application of the petitioners and the land in question. He submitted that, in any case, even if the factum of handing over the possession on 27.6.1968 is to be considered, then also the same was without following the mandatory procedure of surrendering of the possession as required under Section 32P(2)(b) and, therefore, it is no surrendering of the

possession in the eye of law and the land would not fall outside the scope of Section 32PP of the Act for the purpose of deciding the application. For supporting his contention that the procedure as required under Section 32P is mandatory, he relied upon the decision of the Apex Court in the case of **"Ramchandra Keshva Adke (Dead) by Lrs. Vs. Gonvind Joti Chavare and Ors.", reported in AIR 1975 SC, 915**. He, therefore, submitted that the authorities have committed error on the face of record and since the application is not decided on merits, there is jurisdictional error and the impugned orders deserve to be quashed and set aside.

8. Mr.Mengdey, learned AGP and Mr.Patel, learned Counsel have supported the orders passed by the lower Authorities.

9. It appears that there is no dispute on the point that the possession was handed over on 27.6.1968. On the date when the possession was handed over, the application of the petitioner-tenants under Section 32PP of the Act was pending and it is no where contended, nor is it the case of the petitioner-tenants that they

were compelled to hand over the possession or that there was any misrepresentation or that the possession was handed over without prejudice to the rights and contentions of the application under Section 32PP of the Act. Therefore, it can be said that the petitioners, by their own volition handed over the possession of the land in question. The factum of handing over of the possession is also not in dispute and, therefore, under these circumstances, it can also be said that by voluntarily handing over the possession of the land in question to the landlord, the petitioners abandoned right, if any, under Section 32PP of the Act.

10. It deserves to be recorded that such volition on the part of the petitioners is as back as in the year 1968 and when the application was considered by the Mamlatdar in the year 1969, the possession was already handed over and the Mamlatdar has also recorded the said aspects.

11. The jurisdiction of this Court under Article 227 of the Constitution of India is a discretionary, extraordinary jurisdiction. If, by conduct, the Court finds that here is a litigant, who is invoking the jurisdiction with a view to take

any undue benefit, the Court may decline the relief to such person. If the party by his own volition, extinguished or abandoned the right, the right, if any, under the statute, cannot be allowed to extract the benefit of the statute, unless it is contended that under compulsion or coercion or misrepresentation the action was taken of extinguishing or abandoning the rights under the statute. Since, in the present case, none of the aspects falls in the exceptional category, I find that the petitioners should not be allowed to invoke the discretionary jurisdiction under Article 226 or 227 of the Constitution of India, since the petitioners, by their own volition, surrendered the possession on 27.6.1968 without reserving the right, if any, under Section 32PP of the Act. The reliance placed upon the decision of the Apex Court by Mr.Desai, in case of **"Ramchandra Keshav Adke"** (supra) is ill-founded, because in the case before the Apex Court, though there was recording of the surrendering of the possession in the year 1953, the Deputy Collector on examination of the facts found that surrender

was a sham transaction, because the tenant continued thereafter in possession and paid the rent to the landlord up to 1959 and in view of the said facts and circumstances, the decision cannot be made applicable to the facts of the present case by contending that that in all cases the procedure must be followed even if it is not contended by the tenants that the possession was handed over due to any compelling circumstances or misrepresentation or by reserving the the right of the pending application under Section 32PP of the Act.

12. In view of the above, I find that it may not be required for this Court to examine the other contentions as raised by Mr.Desai, learned Counsel appearing for the petitioners. Apart from the above, the contentions as sought to be raised by Mr.Desai for the petitioners, are raised for the first time and appears to have not been raised before the lower authorities. Hence, such contentions can neither be allowed to be raised, nor can be entertained.

13. In the result, the petition is dismissed. Rule discharged.

14. In view of the order passed in the main petition

today, Civil Application shall stand disposed of accordingly.

17.6.2006 **(Jayant Patel, J.)**

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